

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

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|------------------------------------|---|--------------------------|
| TRUSTEES OF THE SUBURBAN TEAMSTERS |) | |
| OF NORTHERN ILLINOIS WELFARE AND |) | |
| PENSION FUNDS, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | No. 2013 C 811 |
| v. |) | |
| |) | Judge Lee |
| T & W EDMIER CORP., |) | |
| an Illinois corporation and |) | Magistrate Judge Rowland |
| THOMAS W. EDMIER, Individually, |) | |
| |) | |
| Defendants. |) | |

AMENDED MOTION FOR JUDGMENT IN SUM CERTAIN

NOW COMES the Plaintiff, TRUSTEES OF THE SUBURBAN TEAMSTERS OF NORTHERN ILLINOIS WELFARE AND PENSION FUND, by and through its attorney, JOHN J. TOOMEY, ARNOLD AND KADJAN, and pursuant to FRCP 55 move for judgment in sum certain as stated in the Complaint and the supporting Affidavits attached hereto. In support of its Motion, Plaintiffs state as follows:

1. On February 1, 2013 Plaintiffs filed a 29 U.S.C. 1145 action for an audit of delinquent contributions plus attorneys' fees, costs and interest under 29 U.S.C. 1132(g)(2) on unpaid contributions.
2. Service upon T & W EDMIER CORP., an Illinois corporation was made on the Defendant on February 7, 2013, and a copy of the proof of service was filed with the court on February 14, 2013.
3. Service upon THOMAS W. EDMIER, Individually was made on the Defendant on February 7, 2013, and a copy of the proof of service was filed with the court on February 14, 2013.

4. Plaintiffs' Motion for Default was heard March 26, 2013 and continued to May 16, 2013. On May 13, 2013 this Court entered judgment and said Order has not been vacated.

5. On May 22, 2013 a Motion for Amended Order of Judgment was filed to reflect sums due under an audit of books and records conducted April 25, 2013 covering the period January, 2010 through March, 2013 and found to be owing:

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|---------|-------------|
| Pension | \$21,018.30 |
| Welfare | \$22,947.24 |

6. Employer was given a copy of the audit review and given notice of findings and has made no effort to challenge, pay or settle.

7. On May 22, 2013 Thomas W. Edmier, in his capacity as President of T & W Edmier Corp., entered into installment note arrangements for the payment of delinquent pension contributions covering the period January, 2010 through March, 2013 with the Suburban Teamsters of Northern Illinois Pension Fund (Exhibit A to Affidavit of Richard Siebert) which he acknowledged as accurate, true and correct in the Affidavit filed with the court on May 29, 2013.

8. On May 22, 2013 Thomas W. Edmier, in his capacity as President of T & W Edmier Corp., entered into installment note arrangements for the payment of delinquent welfare contributions covering the period January, 2010 through March, 2013 with the Suburban Teamsters of Northern Illinois Pension Fund (Exhibit C to Affidavit of Richard Siebert) which he acknowledged as accurate, true and correct in the Affidavit filed with the court on May 29, 2013.

9. On the face of the notes the maker acknowledged that the indebtedness represents fringe benefit contributions and charges due and owing pursuant to 29 U.S.C. 1145.

10. The Pension Fund delinquency note was entered into for the principal amount of \$21,018.30 (Exhibit A to Affidavit of Richard Siebert). The maker of the note made 1 of 12 installment note payments of \$575.53 before defaulting on the June 15, 2013 second installment note payment. The balance of \$18,529.55 remains unpaid on the Pension Fund installment note as reflected in the payment ledger (Exhibit B to Affidavit of Richard Siebert).

11. The Welfare Fund delinquency note was entered into for the principal amount of \$22,947.24 (Exhibit C to Affidavit of Richard Siebert). The maker of the note made 1 of 12 installment note payments of \$628.43 before defaulting on the June 15, 2013 second installment note payment. The balance of \$20,232.75 remains unpaid on the Welfare Fund installment note as reflected in the payment ledger (Exhibit D to Affidavit of Richard Siebert).

12. The total sums remaining owed under the installment notes are:

\$18,529.55 Pension
\$20,232.75 Welfare

13 The maker was given a written notice of default and an opportunity to cure which has not occurred on the June 15, 2013 and July 15, 2013 installment note payments.

14. Defendants have failed to submit timely fringe benefit reports or payment for the months of April, May, June and July, 2013 which is a condition of the notes and an additional basis of default.

15. Defendants' Affidavit filed on May 29, 2013 admits the installment notes are for all sums due and owing the Funds as of May 29, 2013. Said defaults having occurred after the filing of the Affidavit on June 15, 2013 and July 15, 2013.

16. As supported by the attached Affidavits, the sums due on the Complaint as admitted by Defendant by signing the installment notes and payment prior to default:

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|-----------------|--|
| \$18,529.55 | Defaulted Pension Fund installment note payments |
| \$20,232.75 | Defaulted Welfare Fund installment note payments |
| \$925.00 | Attorneys fees |
| <u>\$414.00</u> | Court costs |
| \$40,101.30 | Total |

plus such additional relief under 29 U.S.C. 1132(g).

WHEREFORE, Plaintiff prays for:

1. Entry of judgment against Defendants, T & W EDMIER CORP., an Illinois corporation and THOMAS W. EDMIER, Individually, jointly and severally, and in favor of Plaintiffs, TRUSTEES OF THE SUBURBAN TEAMSTERS OF NORTHERN ILLINOIS WELFARE AND PENSION FUNDS in the amount of \$40,101.30 and substituting that amount for the May 13, 2013 Order.

TRUSTEES OF THE SUBURBAN TEAMSTERS
OF NORTHERN ILLINOIS WELFARE AND
PENSION FUNDS

s/John J. Toomey
ARNOLD AND KADJAN
203 N. LaSalle Street
Suite 1650
Chicago, Illinois 60601
Telephone No.: (312) 236-0415
Facsimile No.: (312) 341-0438
Dated: July 23, 2013